

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN A. HOGUE,

Petitioner,

vs.

VACA, *et al.*,

Respondents.

2:11-cv-01324-GMN-PAL

ORDER

This is a habeas corpus petition pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. Before the court is respondents' motion to dismiss (ECF #8), which was filed on November 1, 2011. Petitioner has not opposed the motion, despite having received notice from the court of the requirements of *Klingele v. Eikenberry* and *Rand v. Rowland* on November 2, 2011 (ECF #12).

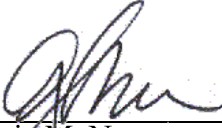
In the motion to dismiss, respondents contend that the petition must be dismissed because it contains unexhausted claims. *See* 28 U.S.C. § 2254(b). Pursuant to the provisions of Local Rule 7-2, petitioner's failure to respond to the motion is a concession on his part that the arguments are valid. Therefore, the motion to dismiss shall be granted.

Petitioner is advised that when a "mixed" petition, that is, a petition containing both exhausted and unexhausted claims, is dismissed, such dismissal is without prejudice. *Rose v. Lundy*, 455 U.S. 509, 510 (1982). Petitioner has the option of returning to state court to exhaust his claims or submitting a new federal habeas petition that presents only the exhausted claims to this court. *Id.* at 520-521. Petitioner is advised to familiarize himself with the limitations periods for filing federal habeas petitions contained in 28 U.S.C. § 2244(d), as those limitations periods may have a direct and substantial effect on whatever choice he makes regarding his claims.

1 **IT IS THEREFORE ORDERED** that respondents' motion to dismiss the petition
2 without prejudice (ECF #8) is **GRANTED**.

3 **IT IS FURTHER ORDERED** the Clerk shall **ENTER JUDGMENT** accordingly and
4 close this case.

5 DATED this 19th day of January, 2012.

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10 Gloria M. Navarro
11 United States District Judge
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